

Amendment C
Serial No. 10/064,637
Amendment Dated: March 31, 2004
Reply to Office Action of January 12, 2004
Attorney Docket No.: 716139.99

REMARKS

Claims 1, 9, 11, 13 and 26 stand rejected under 35 U.S.C 112 (second paragraph).

Claims 1, 3, 11, 12 and 16 stand rejected under 35 U.S.C. 102(b). Claims 2, 4, 10, 14, 17, 18 - 20, 23 - 25, 26, and 27 - 31 stand rejected under 35 U.S.C. 103(a).

Claim 1 was objected to for its use of "at least certain of said upright support members." This language has been amended. It is believed that with the amendment to Claim 1 that this rejection has been overcome.

Claims 9 and 11 have been objected to for the use of "said display rack" in lines 2, 4, and 7. Claims 9 and 11 have been amended to overcome this rejection.

Claims 13 has been objected to because of its defining that the shelf members are oriented in a gravity feed orientation when Claim 12 says they can be either a gravity feed or horizontal orientation. It is submitted that this rejection is in error. It is perfectly permissible to narrow the scope of Claim 12 to define which of the two positions a shelf member is in since this is a narrowing of the Claim language. If the language is appropriate in Claim 12, this narrowing is certainly appropriate in Claim 13.

Claim 26, the word "service," has been changed to read "surface."

It is believed that the rejections of the Claims under 35 U.S.C. 112 have been overcome. It is respectfully requested that these rejections be reconsidered and withdrawn.

Claims 1, 3, and 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Flum '796. For a rejection under 35 U.S.C. 102(b) to be appropriate, each and every element of the

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Claim must be found in the cited reference. The Flum reference does not have the defined attached shelf members with support surfaces extending between the front and rear position support members. Nor does Flum disclose structure adapted to form a display rack with attached shelf members by assembling one subassembly on top of another subassembly. Further, Flum does not have the brace defined in Claim 11 that will resist the side-to-side flexing with the brace being attached to and extending between the rear upright support members. It is also pointed out that Flum does not have the shelves attached to the front and rear support members. It is respectfully pointed out that the shelves of Flum are laid upon and rest on cross members and in no way are attached to subassemblies. Thus, the rejection of these claims cannot be maintained because Flum does not disclose each and every element of the rejected claims. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 1, 3, 11, 12 and 16 stand rejected under 35 U.S.C. 102(b) over Unfried '153.

A review of Unfried, and in particular Figs. 4, 5, 8 and 9, will show that Unfried does not disclose subassemblies. In fact, the only way to assemble Unfried is to first assemble the uprights and then attach the cross members. For example, the cross members 32 are inserted through holes in the assembled uprights, for example hole 26, Figure 4. Likewise, the construction shown in Figs 5, 8 and 9 show similar constructions. Such construction prevents the stacking of one subassembly on to another subassembly as the cross members must remain unattached in order to assemble the uprights. Further, there is no disclosure of the defined shelf members as discussed above in regard to the Flum reference. Thus, it is respectfully pointed out

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that Unfried cannot and does not disclose the use of subassemblies as defined in the rejected claims. Since each and every element of the rejected Claims cannot be found in Unfried, the rejection of these claims as being anticipated is inappropriate. It is respectfully requested that this rejection be reconsidered and withdrawn.

Claim 2 stands rejected under 35 U.S.C. 103(a) over Flum '796. Because Claim 2 depends from Claim 1 which is deemed to be allowable, Claim 2 is also in a condition for allowance. Reconsideration and withdrawal of this rejection are respectfully requested.

Claim 2 also stands rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried. As discussed above, Unfried does not disclose or suggest subassemblies and cannot support the rejection. Reconsideration and withdrawal of the rejection of Claim 2 are respectfully requested.

Claims 4 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796. in view of Battaglia et al. '307. Because Claims 4 and 6 depend directly or indirectly from allowable claims, as discussed above, Claims 4 and 6 are also patentable. Reconsideration and withdrawal of Claims 4 and 6 are respectfully requested.

Claims 4, 6 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried in view Varfolomeeva '387. As pointed out above, Unfried does not disclose a rack comprised of subassemblies as defined in the claims from which Claims 4, 6 and 17 ultimately depend. Therefore, the recitation of Unfried in combination with Varfolomeeva cannot support the rejection of these Claims. Additionally, Claims 4, 6 and 17 depend from allowable claims as

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discussed above, and therefore are also allowable. Reconsideration and withdrawal of the rejection of Claims 4, 6 and 17 are respectfully requested.

Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view Battaglia '307. Claim 5 depends from an allowable claim and is therefore allowable as discussed above. Reconsideration and withdrawal of the rejection of Claim 5 are respectfully requested.

Claims 7, 8, 26 and 27 stand rejected under 35 U.S.C. 103(a) over Flum in view Lee '170. Lee discloses a gravity feed shelf having a product organizer 30. The product organizer 30 does not have, nor does it suggest, that it have product retention openings with a transverse dimension less than the width of the product channel. Lee uses, for example in Figure 2, a bar 134 to close the entire width of the product channel end and does not provide a narrower discharge opening than the width of the product channel. Therefore, Claim 7 cannot be obvious since a feature of Claim 7 is not disclosed or suggested by the cited references. Claim 8 depends from Claim 1 and because Claim 1 is patentable, Claim 8 is also patentable. Claims 26 and 27 depend from Claim 1 and are allowable for that reason alone. Additionally, there is no disclosure in Lee or Flum of an organizer member that is releasably attached to a rack member through a cooperative latch device. Also, as set forth in Claim 27, there is no cooperative latch as specified in Lee which includes transverse extending rail members each secured to a respective organizer member or rack member. It appears that, as seen in Figures 6 and 9 of Lee, that the organizer 30 simply rests on the lower product support. For example in Figure 6, the cross rails 36 appear to rest in upward opening grooves of front and rear members. It is not clear how the rack 30 is held in

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place in the structure of Figure 9. It is therefore submitted that claims 7, 8, 26 and 27 are not obvious over the cited references. Reconsideration and withdrawal of the rejection of these claims are respectfully solicited.

Claims 7, 8, 13 and 26 - 29, stand rejected under 35 U.S.C. 103(a) over Unfried in view of Lee. As discussed above, Unfried does not disclose a display rack structure having first and second or a plurality of rack subassemblies. Therefore, its combination with Lee cannot render these claims obvious since elements of the defined structures are missing particularly from the Unfried structure. Reconsideration and withdrawal of this rejection are respectfully solicited.

Claims 9 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view of Bustos. Claims 9 and 10 depend from allowable claims and are therefore allowable. Reconsideration and withdrawal of the rejection of Claims 9 and 10 are respectfully requested.

Claims 9, 10, 14 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried in view of Bustos. It is again pointed that Unfried is not relevant to the present claims and for the reasons advanced above, its combination with Bustos will not render obvious Claims 9, 10, 14 and 15. Additionally, Claims 9, 10, 14 and 15 depend from allowable claims and are therefore allowable. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 18 - 20 and 23 - 25, stand rejected under 35 U.S.C. 103(a) over Flum in view of Battaglia et al., Lee and Bustos. For the reasons advanced above regarding Claims 1 and 12, it is submitted that Claims 18 - 20 are also allowable, since Claims 18 - 20 contain limitations similar to those discussed above regarding Claims 1 and 12. Because Claims 23 - 25 depend from

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allowable claims, they are also allowable. Reconsideration and withdrawal of the rejection of Claims 18 - 20 and 23 - 25 are respectfully requested.

Claims 21 and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Flum in view of Battaglia et al., Lee and Bustos. Because Claims 21 and 22 depend from an allowable Claim, these Claims are also allowable. Reconsideration and withdrawal of the rejection of Claims 21 and 22 are respectfully requested.

Claims 18 - 20, 23 - 25, 30 and 31 stand rejected under 35 U.S.C. 103 over Unfried in view Varfolomeeva, Lee and Bustos. As discussed above, Unfried is not relevant to the present invention. Thus, Unfried will not support a rejection of these claims. Additionally, none of the applied references discloses an organizer member releasably attached to the rack member through cooperative latch devices as defined in Claim 30 and none of the references disclose the particular latch device as defined in Claim 31. These features were discussed in the discussion of Claims 26, 27, 28 and 29 above, and those arguments apply equally to this rejection. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

Because of the limitations now contained in all the independent claims, it is submitted that these claims distinguish over the various suggested combinations of references cited in support of the rejections. Additionally, it is again submitted that Unfried will not support a rejection of these Claims because Unfried does not disclose a structure that can be made into subassemblies. Rather, Unfried requires the insertion of cross support members after the uprights are assembled. For these reasons, it is submitted that the Claims are patentable.

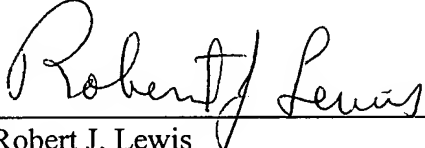
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It is submitted that the Claims as amended are now in a condition for allowance which is respectfully solicited.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard.

Respectfully submitted,

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